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Request for Comments on Discretion to Institute Trials Before the Patent Trial and Appeal Board

Comment On: PTO-C-2020-0055-0001
Discretion to Institute Trials Before the Patent Trial and Appeal Board

Document: PTO-C-2020-0055-0212
Comment from RealTimeTouch.com.

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General Comment

RE: Improving Fairness of PTAB Trails

November 13, 2020

Hello Regulations Department U.S. Government:

My name is Craig L. Linden. I earned my first patent for a double-acting wrench in 1975. I earned other U.S. and international patents in the 1980's for energy-saving micro co-generation machines. I invented a baseball hitting training device and earned a patent in 1995.

My startup company, RealTimeTouch.com is based partially on my 2017, augmented telehealth patent number 9,639,150. I also have two long-pending disruptive patent applications with 1999 priority dates which threaten several large international tech companies.

I was a plaintiff in the lawsuit against the USPTO's Sensitive Application Watch System (SAWS) that ended at the US Supreme Court. Now, individual inventors, startups, and small companies are fighting to have their granted patents fairly adjudicated by the relatively new anti-patent PTAB.

Please stop the giant international tech companies who use lobbying power to dictate the PTAB rules. These rules need to be amended because they unfairly invalidate patents earned by individual inventors and small companies.

Protecting patents rights is fundamental to encourage innovation and a fair patent system is critical for funding of startup companies.

I urge adoption of regulations to govern the discretion to institute PTAB trials consistent with the following principles.

I: PREDICTABILITY

Regulations must provide predictability. Stakeholders must be able to know in advance whether a petition is to be permitted or denied for policy reasons. To this end regulations should favor objective analysis and eschew subjectivity, balancing, weighing, holistic viewing, and individual discretion. The decision-making should be procedural based on clear rules. Presence or absence of discrete factors should be determinative, at least in ordinary circumstances. If compounded or weighted factors are absolutely necessary, the number of possible combinations must be minimized and the rubric must be published in the Code of Federal Regulations.

II: MULTIPLE PETITIONS

a) A petitioner, real party in interest, and privy of the petitioner should be jointly limited to one petition per patent.

b) Each patent should be subject to no more than one instituted AIA trial.

c) A petitioner seeking to challenge a patent under the AIA should be required to file their petition within 90 days of an earlier petition against that patent (i.e., prior to a preliminary response). Petitions filed more than 90 days after an earlier petition should be denied.

d) Petitioners filing within 90 days of a first petition against the same patent should be permitted to join an instituted trial.

e) These provisions should govern all petitions absent a showing of extraordinary circumstances approved by the Director, Commissioner, and Chief Judge.

III: PROCEEDINGS IN OTHER TRIBUNALS

a) The PTAB should not institute duplicative proceedings.

b) A petition should be denied when the challenged patent is concurrently asserted in a district court against the petitioner, real party in interest, or privy of the petitioner and the court has

neither stayed the case nor issued any order that is contingent on institution of review.

c) A petition should be denied when the challenged patent is concurrently asserted in a district court against the petitioner, real party in interest, or privy of the petitioner with a trial is scheduled to occur within 18 months of the filing date of the petition.

d) A petition should be denied when the challenged patent has been held not invalid in a final determination of the ITC involving the petitioner, real party in interest, or privy of the petitioner.

IV: PRIVY

a) An entity who benefits from invalidation of a patent and pays money to a petitioner challenging that patent should be considered a privy subject to the estoppel provisions of the AIA.

b) Privy should be interpreted to include a party to an agreement with the petitioner or real party of interest related to the validity or infringement of the patent where at least one of the parties to the agreement would benefit from a finding of unpatentability.

V: ECONOMIC IMPACT

Regulations should account for the proportionally greater harm to independent inventors and small businesses posed by institution of an AIA trial, to the extent it harms the economy and integrity of the patent system, including their financial resources and access to effective legal representation.

Keep American innovation ALIVE!

Sincerely yours,

Craig L. Linden, Inventor